IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Appeal from Order No.546 of 2007.

Smt.Sharda Shankar Sapkal,
since deceased through heir
Smt. Rajshree S. Sapkal ..Appellant

versus

Shri Virupaksh Malkappa
Shivnagi ..Respondent.

Mr. Pratap Patil for the Appellant

Mr.P.D.Pise for the respondents 1, 2, 3b to 3d and 4.

Coram : S.R.Sathe, J.
Dated : 7th Sept., 2007

P.C.

1. Heard both the learned advocates.

2. The appellant has preferred this appeal aginst the order passed by the District Judge 2, Sangli, in Misc. Civil Application No.242 of 2002 whereby the application filed by the appellant's alleged sister Sharda Shankar Sapkal for setting aside the Order regarding dismissal of appeal for non prosecution was dismissed.

3. Brief facts giving rise to the present appeal are as under:

. The present respondents had filed Regular Civil Suit No.136 of 1985 in the Court of CJJD, Miraj, for possession against Sharda Shankar Sapkal. The said suit was decreed. Sharda, therefore, filed Regular Civil Appeal No.518 of 1990 in Diastrict Court, Sangli. The said appeal came to be dismissed for want of prosecution on 9.8.1999. Sharda, therefore, filed Misc. Civil Application No.242 of 2002 for restoration of the appeal. As there was delay in filing the said appeal, she filed Misc. Civil Application No.108 of 2000 for condonation of delay. In that application she filed Exhibit 5 and prayed for stay to the Execution of the Decree passed in Regular Civil Suit No.135 of 1987. The said application was allowed. The Court also allowed appliction for condonation of delay.

4. On 25.7.2003 the present appellant Rajshree Shankar Sapkal filed an application Exhibit 14 in the District Court, Sangli and submitted that Sharda died on 15.7.2003 and the present appellant is her sister and only legal heir of Sharda and as such her name be shown as legal heir and legal representative of the Original applicant Sharda Shankar Sapkal.

5. The said applicatin was opposed by the Respondents and they contended that Rajshree is not the sister of Sharda and Sharda has no legal heir. The present appellant, therefore prayed that the Court should determine the question as to whether the present appellant Rajshree is the legal representative of Sharda.

6. Rajshree filed her affidavit and also produced certain documents including copy of school leaving certificate and copy of Electrol Roll. The respondent produced one application Exhibit 27 filed in Regular Darkhast No.42 of 2000. It was the application filed by Sharda. After considering the entire evidence the learned District Judge, Sangli came to the conclusion that the present appellant Rajshri has failed to prove that she is sister of late Sharda Shankar Sapkal. He, therefore, dismissed the application Exhibit 14 as well as the application filed for setting aside the order regarding dismissal of the original appeal. Being aggrieved by the same, Rajshri has filed the present A.O.

7. In this appeal before me, Shri patil, learned Advocate for the appellant submitted that the learned District Judge has not considered the School Leaving Certificate and the copy of the Electrol Roll on the ground that the originals were not produced and wrongly held that the applicant Rajshree has failed to prove that she is the legal heir of Sharda. He, therefore, submited that the appeal be allowed and the application made by Rajshree to bring her on record as heir of Sharda be granted. As against this, the learned advocate for the respondent supported the Order passed by the learned District Judge, Sangli.

8. It is needless to say that the burden was on the applicant Rajshress to prove that she is sister of late Sharda Shankar Sapkal. For that purpose she could have produced her birth certificate. However, she did not do so, she only produced the School Leaving Certificate. However, instead of producing the original School Leaving Certificate she produced only the xerox copy. What is more to be noted is that said certificate was not even duly certified as "True Copy" by the Competent Authority. The applicant had not even made out any reason for

allowing her to produce the secondary evidence. In fact, she could have even summoned the head master of the School who issued the School Leaving Certificate. But that was also not done. Mere production of the copy of the Electrol Roll is not sufficient to jump to the conclusion that the applicant has proved that she is the sisteer of Sharda. If we peruse the age mentioned in the Electrol Roll of Rajshree and if we take into consideration the birth date mentioned in the School Leaving Certificate, the same do not correspond. Even, in the Electorl roll the name shown is Sasal Sharda Shankar and that is also written twice, means there are two entries of the same name. So, no reliance can be placed on such type of evidence. Apart from it, as the applicant failed to produce the Original School Leaving Certificate, the learned District Judge was justified in not accepting the simple xerox copy of the School Leaving Certificate.

9. The applicant could have even adduced some oral evidence of other relative or any other documentary evidence to show that Sharda was her sister. She has admitted in cross examination that she is having ration card. It is her case that all

along she was residing with Sharda as Sharda was unmaried and she was also unmarried. However, she has not even produced her ration card.

10. It is admitted fact that in the execution proceeding filed by the respondent against Sharda, she had filed one application and in her application she had stated that she had no any nearest relative to look after her. If really Rajshree was residing along with Sharda, at the relevant time as alleged by Rajshree, then ormally Sharda would not have made such statement. So, this circumstance also creates doubt about Rajshree’s version that she is the sister of Sharda. From Raajshree’s evidence it appears that she has some other sisters also. So, having regard to all this, the learned Judge was justified in not accepting Rajshree’s version. Under the circumstances, I am not inclined to interfere with the Order passed by the learned District Judge. Hence, I pass the following Order.

ORDER

. A.O. is partly allowed.

. The Order passed by the District Judge rejecting the appellant’s application Exhibit 14 is confirmed.

. The Order passed by the District Judge rejecting the Misc. Civil Application No.242 of 2002 is set aside, instead it is ordered that Misc. Civil Application No.242 of 2002 stands abated.

(S.R.Sathe, J)